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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,057	11/22/2000	Henning Von Spreckelsen	FIL-008	7735
22832	7590	01/11/2010		
K&L Gates LLP STATE STREET FINANCIAL CENTER One Lincoln Street BOSTON, MA 02111-2950			EXAMINER HICKS, ROBERT J	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 01/11/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

09/701,057

Applicant(s)

VON SPRECKEISEN ET AL.

Examiner

ROBERT J. HICKS

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 November 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/02)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

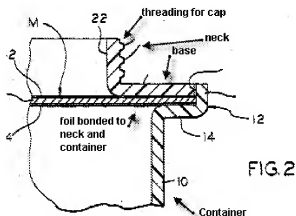
2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. **Claims 12, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Helms et al. (4,359,169) [Helms] in view of Graboski et al. (6,117,506) [Graboski] and further in view of Flanagan (6,082,568).**

Regarding Amended Claims 12 and 16, plus claim 17, the patent to Helms – a container closure system – discloses a process for bottling a fluid comprising a thin-walled plastic bottle assembly [C, Fig. 2] with a molded thin-walled bottle body having a top-located open mouth [within 16]; filling said bottle body with a fluid through said open mouth of said bottle body [Col. 2 Lines 63-66]; fitting said fluid filled bottle body a molded neck and cap assembly [E, L] having a neck [E] to which a resealable cap [18] is removably secured [L, Fig. 3], a base [20] that is sized to correspond to said open

mouth of said fluid filled body [Fig. 2] and a tearable sealing foil [30, Col. 2 Lines 63-66] that is completely sealed and bonded to the base [Col. 2 Lines 55-62]; said foil is bonded to said bottle body after said bottle body has been filled with a fluid [Col. 2 Lines 55-62]; and induction heat sealing said bottle body to said foil of said neck and cap assembly to completely seal said bottle body [Col. 2 Lines 55-62]. The neck and foil are assembled together first, before the neck is placed on the bottle body, and then the foil is induction heat sealed to the container and to the neck and cap assembly.



Helms does not expressly disclose that the bottle body is extrusion blow molded and non-gas tight; however, the patent to Graboski – a multilayer bottle – discloses a container (**Graboski**, 10) that is extrusion blow molded and non gas-tight (**Graboski**, Col. 2 Lines 59-64, and Col. 3 Lines 11-24). Once the gas has been used to open the container top, and the bore device removed, the gas can escape from the container, making the container non-gas tight. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the Helms container to be extrusion blow molded and non gas

tight, as suggested by Graboski, "for protecting its contents from degradation due to light" (**Graboski**, Col. 1 Lines 46-47).

The Helms and Graboski combination does not expressly disclose that the neck and cap assembly are both injection molded; however, the patent to Flanagan - a cap and container combination - discloses that the neck and cap (**Flanagan**, 3, 4) and the container (**Flanagan**, 1) are injection molded (**Flanagan**, Col. 6 Lines 45-47, Col. 7 Lines 1-3, and Col. 8 Lines 12-13), in which the container holds a fluid (**Flanagan**, Abstract Lines 1-3), and in which the foil is bonded to the base (**Flanagan**, Col. 7 Lines 23-30) and then onto the container (**Flanagan**, Col. 8 Lines 36-43). The neck and cap are injection molded in order for the items to be mass produced. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to manufacture the Helms and Graboski combination cap and container assembly using injection molded parts, as suggested by Flanagan, in order to produce the product on a mass scale (**Flanagan**, Col. 2 Lines 44-48), and as the liner can be removed from the interior of the neck and cap assembly (**Flanagan**, Col. 2 Lines 61-65).

4. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Helms in view of Graboski in view of Flanagan as applied to amended claim 12 above, and further in view of Kitahora et al. (6,076,334) [Kitahora].

Regarding Claim 13, Helms in view of Graboski in view of Flanagan discloses all the limitations substantially as claimed, as applied to amended claim 12 above. The Helms, Graboski, and Flanagan combination does not expressly disclose a sterilization

step for the foil; however, the patent to Kitahora – a system and method of sterile packaging – discloses a cap sterilization process (**Kitahora**, 26) for caps made with a metal sheet (**Kitahora**, Col. 3 Lines 4-10). The caps are sterilized before being placed on the bottle to prevent contamination of the contents. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to manufacture the Helms, Graboski, and Flanagan combination cap and container assembly by going through a sterilization process for the cap, as suggested by Kitahora, "to omit any sterilization treatment of plastic containers at the time of filling beverages" (**Kitahora**, Col. 1 Lines 39-41).

5. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Helms in view of Graboski in view of Flanagan as applied to amended claim 12 above, and further in view of Kauffman et al. (4,141,680) [Kauffman].

Regarding Claim 14, Helms in view of Graboski in view of Flanagan discloses all the limitations substantially as claimed, as applied to amended claim 12 above. The Helms, Graboski, and Flanagan combination does not expressly disclose that the bottles are extrusion blow molded in a rotary machine; however, the patent to Kauffman – a rotary stretch blow molding process – discloses blow molded containers that are processed through a rotary machine (**Kauffman**, Fig. 1). The bottles are made in a known assembly line fashion. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to extrusion blow mold the Helms, Graboski, and Flanagan combination cap and container assembly by going through a rotary machine, as suggested by Kauffman, as

"The container caps and containers of the present invention are preferably mass produced." (**Flanagan**, Col. 8 Lines 12-13).

Regarding Claim 15, Helms in view of Graboski in view of Flanagan in view of Kauffman discloses all the limitations substantially as claimed, as applied to claim 14 above; further, Flanagan teaches each bottle body is passed directly to a fluid filling station (**Flanagan**, Col. 8 Lines 21-24, and Lines 34-36).

Response to Arguments

6. Applicant's arguments with respect to claims 12, 16, and 17 have been considered but are moot in view of the new ground(s) of rejection. In response to applicant's argument that the Moore (5,680,968), Graboski, and Flanagan references fail to show certain features of applicant's invention regarding amended claims 12, 16, and 17 {**Remarks**, Page 4 Line 18 to Page 5 Line 26}, see Paragraph 3 of this office action to see how Helms in view of Graboski in view of Flanagan meets the claim limitations regarding amended claims 12, 16, and 17.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Helms (4,401,231).

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/
Examiner, Art Unit 3781

/Anthony Stashick/
Supervisory Patent Examiner, Art
Unit 3781